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In Re Application of:

POLO et al.

Serial No.: 09/872,086

Art Unit: 1648

Filing Date: May 31, 2001

Examiner: S. Brown

Title: **METHOD FOR THE PURIFICATION OF ALPHAVIRUS
REPLICON PARTICLES**

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RESPONSE TO REQUIREMENT FOR RESTRICTION AND AMENDMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Response to Restriction Requirement

This is in response to the Restriction Requirement dated November 28, 2001 (Paper No. 5). Submitted herewith is a petition for a two-month extension of time and appropriate fee, making a response due on or before February 28, 2002. Accordingly, this response is timely filed. The Examiner therein required election of one of the following groups of claims:

Group I: Claims 1-12, drawn to a method for purifying alphavirus replicon particles, class 435, subclass 243;

Group II: Claims 13-15, drawn to a method for stimulating an immune response, class 435, subclass 455;

Group III: Claims 16-19, drawn to a method of producing alphavirus replicon particles, class 435, subclass 69.1;

Group IV: Claims 20 and 21, drawn to a method of producing alphavirus replicon particles, class 435, subclass 69.1;

Group V: Claims 22-24, drawn to a method for detecting multiple recombination events, class 435, subclass 69.1; and

Group VI: Claims 25-28, drawn to a method for quantitating alphavirus replicon particles, class 435, subclass 5.

Applicants hereby elect to prosecute the claims of Group VI, claims 25 to 28, **with traverse**. In support of the restriction requirement, the Examiner asserts that the claims of each group are unrelated. However, Applicants submit that all of the Groups are “related” – indeed, all of the Groups involve methods of producing, analyzing and/or using alphavirus replicon particles. Further, all the allegedly unrelated Groups are classified in Class 435 in the U.S. Patent Classification System. Further, Groups III, IV and V share the same subclassification of 69.1. Therefore, all of the Groups are subject to all the same definitions, rules and, moreover, searches. Accordingly, they should be examined together and it would not constitute an undue burden for the Examiner to do so.

Applicants note that the MPEP clearly states that where the claims define the same essential characteristics of a single disclosed embodiment of an invention, varying in scope or breadth of definition of the same disclosed subject matter, a restriction requirement is improper. (see, MPEP 806.03) As discussed above, Groups I through VI define essentially the same subject matter, **as evidenced by their classification in Class 435**. Certainly, Groups III through VI define the same subject matter as evidenced by the classification of Groups III to V in Class 435 and subclass 69.1 and by the fact that all allegedly distinct Groups are directed to methods of producing or analyzing alphavirus particles. Thus, applicants submit that the Restriction Requirement be redefined to combine, at a minimum, Groups III to VI. As acknowledged by the Examiner, the search required for all the allegedly distinct Groups is the same. Therefore, examination of these allegedly distinct inventions in one application would not only not place an undue burden on the Examiner, but would actually save the Examiner time.

Applicants expressly reserve their right under 35 USC §121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application. Further, should the Examiner make the requirement final, Applicants reserve the right to appeal.

Preliminary Amendment

Prior to substantive examination, please add the following new claims:

--29. (New) The method of claim 27, wherein said at least one expression cassette expresses E1 and E2 glycoproteins.

30. (New) The method of claim 25, further comprising the step of overlaying said infected cells with a layer of agarose.

31. (New) A composition comprising quantified alphavirus replicon particles produced by the method of claim ~~25~~.

Attached hereto is a **version showing changes made to claims and currently pending claim set.**

New claims 29 to 31 have been added. All the new claims are directed to elected subject matter and all find support throughout the specification as filed. In particular, new claim 29 finds support, for example, in paragraphs 0042 and 0050. New claim 30 finds support, for example in paragraph 0087. New claim 31 finds support throughout the specification, for example, in paragraph 0008.

No new matter has been added as a result of these amendments and entry thereof is respectfully requested.

Please direct all further communications regarding this application to:

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Respectfully submitted,

Date: Feb 28, 2002

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